



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2016-0026]

RIN 1625-AA00

Safety Zone, Block Island Wind Farm; Rhode Island Sound, RI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a 500-yard safety zone around each of five locations where the Block Island Wind Farm (BIWF) wind turbine generator (WTG) towers, nacelles, blades and subsea cables will be installed in the navigable waters of the Rhode Island Sound, RI, from April 1 to October 31, 2016. These safety zones are intended to safeguard mariners from the hazards associated with construction of the BIWF. Vessels would be prohibited from entering into, transiting through, mooring, or anchoring within these safety zones while construction vessels and associated equipment are present at any of the BIWF WTG sites, unless authorized by the Captain of the Port (COTP), Southeastern New England or the COTP's designated representative. We invited your comments on

this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

ADDRESSES: You may submit comments identified by docket number USCG-2016-0026 using the *Federal e-Rulemaking Portal* at <http://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, contact Mr. Edward G. LeBlanc, Chief of the Waterways Management Division at Coast Guard Sector Southeastern New England, telephone 401-435-2351, e-mail Edward.G.LeBlanc@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Acronyms

| | |
|---------|---------------------------------|
| BIWF | Block Island Wind Farm |
| CFR | Code of Federal Regulations |
| COTP | Captain of The Port |
| DHS | Department of Homeland Security |
| EO | Executive order |
| FR | <i>Federal Register</i> |
| NPRM | Notice of proposed rulemaking |
| NTM | Notice To Mariners |
| Pub. L. | Public Law |
| § | Section |
| U.S.C. | United States Code |
| WTG | Wind Turbine Generator |

II. Background, Purpose, and Legal Basis

On January 6, 2016, the Coast Guard was notified by Deepwater Wind Inc, developer of the Block Island Wind Farm, that the second phase of construction activities are planned from April 1 to October 31, 2016, to install turbines, nacelles, blades, and subsea cables at each of the five WTG sites. The Coast Guard published a safety zone regulation, similar to this proposed rule, which applied to the first phase (installation of foundations) of construction of the BIWF in 2015. The Coast Guard is now proposing a similar rule for the second phase of BIWF construction.

This rule is necessary to provide for the safety of life and navigation, for construction and support vessels, BIWF workers, mariners, and the boating public during construction activities in the vicinity of the BIWF in Rhode Island Sound, RI.

The legal basis for the proposed rule is 33 U.S.C., 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5 Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish safety zones.

III. Discussion of Proposed Rule

The Coast Guard proposes to establish a 500-yard

safety zone around each of five locations where the BIWF WTG towers, nacelles, blades, and subsea cables will be installed in the navigable waters of the Rhode Island Sound, RI, from 1 April to 31 October 2016. Locations of these platforms are:

| <u>Platform</u> | <u>Latitude</u> | <u>Longitude</u> |
|-----------------|-----------------|------------------|
| WTG 1 | 41°7'32.74"N | 71°30'27.04"W |
| WTG 2 | 41°7'11.57"N | 71°30'50.22"W |
| WTG 3 | 41°6'52.96"N | 71°31'16.18"W |
| WTG 4 | 41°6'36.54"N | 71°31'44.62"W |
| WTG 5 | 41°6'22.79"N | 71°32'15.50"W |

These safety zones are intended to safeguard mariners from the hazards associated with construction of the BIWF, and are of similar dimensions and duration as safety zones established in 2015 for the same purpose, during the first phase of construction of the BIWF. Vessels will be prohibited from entering into, transiting through, mooring, or anchoring within these safety zones while construction vessels and associated equipment are present unless authorized by the COTP, Southeastern New England or the COTP's designated representative.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and E.O.s related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights

of protestors.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under E.O. 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on a number of factors. The safety zones are only 500 yards in diameter, centered on each of five WTG locations, and enforced only when construction vessels are on scene or when construction activities are taking place. Also, construction of the five WTG sites is sequential, not concurrent, so that construction vessels and activities (and hence, safety zones) are present at only one or two sites at any given time. The Coast Guard will publicize these safety zones well in advance via the Local Notice to Mariners, and Deepwater Wind will update its website daily to keep mariners informed of what safety zones, if any, may

be enforced. Lastly, safety zones of the same size and duration were implemented for the first phase of the BIWF construction in 2015 with no significant impact to mariners or small entities.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit these safety zones may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on

it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of

government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this proposed rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed

rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves safety zones that would prohibit entry within 500 yards of each WTG site of the BIWF while construction vessels and associated equipment are present at any of the BIWF WTG sites and maybe categorically excluded from further review under paragraph 34(g) of Figure 2-1 of Commandant Instruction M16475.1D. A preliminary environmental analysis checklist is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have

provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 reads as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T0026 to read as follows:

§165.T0026 Safety Zone, Block Island Wind Farm; Rhode Island Sound, RI

(a) Location. Areas within a 500-yard radius of the following five positions are safety zones:

| <u>Platform</u> | <u>Latitude</u> | <u>Longitude</u> |
|-----------------|-----------------|------------------|
| WTG 1 | 41°7'32.74"N | 71°30'27.04"W |
| WTG 2 | 41°7'11.57"N | 71°30'50.22"W |
| WTG 3 | 41°6'52.96"N | 71°31'16.18"W |
| WTG 4 | 41°6'36.54"N | 71°31'44.62"W |
| WTG 5 | 41°6'22.79"N | 71°32'15.50"W |

(b) Enforcement period. From April 1 to October 31, 2016, vessels will be prohibited from entering into any of these safety zones, when enforced, during construction activity of five Block Island Wind Farm (BIWF) wind turbine generators (WTG) located in the positions listed in 2(a) above.

(c) Definitions. The following definitions apply to this section:

(1) Designated representative. A "designated representative" is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been

designated by the Captain of the Port, Sector Southeastern New England (COTP), to act on his or her behalf.

(d) Regulations. (1) The general regulations contained in 33 CFR 165.23 as well as the following regulations apply to the safety zones established in conjunction with the construction of the BIWF; Rhode Island Sound, RI. These regulations may be enforced for the duration of construction.

(2) Vessels must not enter into, transit through, moor, or anchor in these safety zones during periods of enforcement unless authorized by the COTP, Southeastern New England or the COTP's designated representative. Vessels permitted to transit must operate at a no-wake speed, in a manner which will not endanger construction vessels or associated equipment.

(3) Failure to comply with a lawful direction from the COTP, Southeastern New England or the COTP's designated representative may result in expulsion from the area, citation for failure to comply, or both.

Dated: January 22, 2016

J. T. KONDRATOWICZ.
Captain, U.S. Coast Guard
Captain of the Port Southeastern New England
[FR Doc. 2016-03091 Filed: 2/12/2016 8:45 am; Publication Date: 2/16/2016]